The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PREETI N. BHOI,
RAMANATHAN SRINIVAS and SHARAD SINGHAL

Appeal No. 2006-0744
Application 09/495,818

ON BRIEF

Before THOMAS, HAIRSTON, and SAADAT, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 through 20.

Representative independent claim 1 is reproduced below.

1. A TCP/IP-based application system, comprising:

an application module that performs predetermined functions based on external requests from an external queue, the external queue being external to the application system

and storing the external requests before the requests are fetched into the application system;

a network interaction module coupled to the application module and the external queue (1) to fetch the external requests from the external queue into the application system and (2) to determine which, if any, of the fetched requests will not be processed by the application module based on the processing capacity of the application module and the rate of the external requests arriving at the external queue.

The following reference is relied on by the examiner:

Swales	6,321,272	Nov. 20, 2001 (filed Sep. 10, 1997)

Claims 1 through 20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Swales.

Rather than repeat the positions of the appellants and the examiner, reference is made to the Brief and Reply Brief for appellants' positions, and to the Answer for the examiner's positions.

OPINION

We reverse.

Each of independent claims 1 and 14 on appeal requires in part that the network interaction module "determine which, if any, of the fetched requests will not be processed by the

application module based on the processing capacity of the application module and the rate of the external requests arriving at the external queue." This feature is substantially set forth in independent claim 14 as well along with the additional feature of "rejecting the requests not to be processed such that the possibility of dropping a request from the external queue is minimized and the response time of the application system to the requests is minimized." This latter quoted feature is not recited in independent claim 1 on appeal.

We reverse the stated rejection of the claims on appeal because the feature common to both independent claims 1 and 14 on appeal is not taught in the Swales patent, even though we recognize, as the examiner urges, that the claimed queuing functions per se are generally taught in this reference. The Answer does not appear to squarely address the functional features we quoted earlier in this opinion and the reference plainly does not teach them.

The web server 30 in figure 2 of Swales is detailed more specifically in figure 3. This web server 30 is also shown in detail as web server 30 in figure 4 composed of a web server 90 and a proxy element 92 as a part of Swales' first embodiment.

A corresponding showing exists in figure 5 and the throttling router 134 in figure 6 corresponds to the proxy device in figures 4 and 5.

As revealed initially in the Abstract, this proxy server takes the role of a TCP/IP router and it is configured to control the rate at which messages are forwarded from a non-real time to a real time portion of the network. Its aim is to keep the loading of the real time portion stable regardless of external communication demand. What is significantly revealed initially in the Abstract is that the reference appears not to determine which, if any, of the fetched requests will not be processed. According to the last sentence of the Abstract:

> All communication from devices whose traffic loadings cannot be so controlled is arranged to pass through the proxy device in order to gain access to the deterministic network, and the proxy enforces the budget limits by introducing deliberate delays to the request messages if necessary.

It therefore appears that this proxy device always processes incoming messages such as to not be capable of not processing any of them as the claims require. The messages according to Swales are still processed, but only by delaying

them. This is emphasized in the discussion of figure 4 beginning at column 10 of Swales essentially through the end of the patent.

Thus, the reference is not directed to determining which, if any, of the fetched requests will not be processed at all by the application module or server based upon the processing capacity of the application module or server and the rate of the external requests arriving at the external queue as required by claims 1 and 14 on appeal. We therefore agree with the appellants' repeated emphasis in the Brief and Reply Brief that Swales did not teach these features. Therefore, on this basis alone, we cannot sustain the rejection of independent claims 1 and 14 on appeal. Based upon the additional requirement at the end of independent claim 14 on appeal that the noted requests not to be processed are rejected such that the possibility of dropping a request from the external queue is minimized and the response time of the application system to the requests is minimized also cannot be met. Since we reverse the rejection of independent claims 1 and 14 on appeal, we therefore also reverse the rejection of their respective dependent claims.

In view of the foregoing, the decision of the examiner rejecting claims 1 through 20 under 35 U.S.C. § 102 is reversed.

REVERSED

JAMES D. THOMAS)
Administrative Patent Judge)
)
)
) BOARD OF PATENT
)
KENNETH W. HAIRSTON) APPEALS AND
Administrative Patent Judge)
) INTERFERENCES
)
)
MAHSHID D. SAADAT)
Administrative Patent Judge)

JDT:psb

Hewlett-Packard Company
P.O. Box 272400
3404 E. Harmony Road
Intellectual Property Administration
Fort Collins, CO 80527-2400